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DEPARTMENT OF TRANSPORTATION

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Coast Guard

33 CFR PART 165

USCG-2004-19416-38

CGD09-04-050

RIN 1625-AA00

Safety Zone; Lake Erie, Brownstown, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the Lake Erie Metro Park Fireworks on July 2, 2004. This safety zone is necessary to control vessel traffic within the immediate location of the fireworks launch site and to ensure the safety of life and property during the event. This safety zone is intended to restrict vessel traffic from a portion of Lake Erie.

**DATES:** This rule is effective from 9:00 p.m. (local) until 11:00 p.m. (local) on July 2, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [CGD09-04-050] and are available for inspection or copying at: U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave. Detroit, MI 48207, between 8:00 a.m. (local) and 4:00 p.m. (local), Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** ENS Cynthia Lowry, U. S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave. Detroit, MI 48207. The telephone number is (313) 568-95.

**SUPPLEMENTARY INFORMATION:**

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on recent

accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Detroit has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing safety zones to control vessel movement around the locations of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risks.

#### Discussion of Rule

The safety zone will encompass all waters of Lake Erie surrounding the fireworks launch platform, bounded by the arc of a circle with a 400-yard radius with its center in approximate position 42° 03'00" N, 083° 10'49" W (off of Lake Erie Metro Park). The geographic coordinates are based upon North American Datum 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the

instructions of the Coast Guard Captain of the Port or the designated on-scene patrol representative. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

#### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning or Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in

their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U. S. C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect from 9:00 p.m. until 11:00 p.m. (local) the day of the event and allows vessel traffic to pass outside of the safety zone. Before the effective period, we will issue maritime advisories widely available to users of Lake Erie by the Ninth Coast Guard District Local Notice to Mariners, and Marine Information Broadcasts. Facsimile broadcasts may also be made.

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of

compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply,

distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedure; and related management system practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with

the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule fits the category from paragraph (34)(g) because it establishes a safety zone.

Under figure 2-1, paragraph (34)(g), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

#### PART 165 - REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05-

1(g), 6.04-1, 6.04-6, 160.5;"Department of Homeland Security Delegation No. 0170.1."

2. A new temporary section §165.T09-050 is added to read as follows:

§165.T09-050 Safety Zone; Lake Erie, Brownstown, MI.

(a) Location. The safety zone will encompass all waters of Lake Erie surrounding the fireworks launch platform, bounded by the arc of a circle with a 400-yard radius with its center in approximate position 42° 03'00" N, 083° 10'49" W (off of Lake Erie Metro Park). The geographic coordinates are based upon North American Datum 1983 (NAD 83).

(b) Enforcement Period. This section is effective from 9:00 p.m. (local time) until 11:00 p.m. (local time) on July 2, 2004. This section will be enforced on the navigable waters of Lake Erie from 9:00 p.m. (local time) until 11:00 p.m. (local time) on July 2, 2004.

(c) Regulations.

(1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within the temporary safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port

Detroit or his duly appointed representative.

(3) The "designated on scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone shall comply with all directions given to them by the Captain of the Port Detroit or his representative.

DATED: 6-30, 2004



P. G. Gerrity  
Commander, U.S. Coast Guard  
Captain of the Port Detroit